

RECORDATION NO. 23087-A
1425

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INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 2483-138]

AGREEMENT AND ASSIGNMENT

Dated as of April 1, 1981

Between

WHITTAKER CORPORATION, BERWICK
FORGE AND FABRICATING DIVISION,
as Builder

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
as Agent

AGREEMENT AND ASSIGNMENT dated as of April 1, 1981, between WHITTAKER CORPORATION, BERWICK FORGE AND FABRICATING DIVISION (the "Builder"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Participation Agreement dated as of the date hereof (the "Participation Agreement"), a copy of which has been delivered to the Builder (said Agent, as so acting, being hereinafter called the "Assignee").

WHEREAS the Builder and MELLON INTERNATIONAL LEASING COMPANY (the "Vendee") have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") covering the construction, sale and delivery by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the CSA (the "Equipment"); and

WHEREAS the Vendee and UTILITY FUELS, INC. (the "Lessee"), have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to the Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due from the Vendee to the Builder under the CSA;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to construct and deliver the Equipment and the right to receive the payments specified in Paragraph 4.3(a) thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in Paragraph 4.1 of the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this section, all the Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 14 of the CSA or relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Vendee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder. The Builder will not deliver any of the Equipment to the Vendee under the CSA until the CSA, the Lease, this Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing has occurred).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense,

setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give to the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon such Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Paragraph 4.2 of the CSA with respect to the Equipment of the Builder, shall pay to the Builder an amount equal to that which is received from the Vendee pursuant to the second paragraph of Paragraph 1 of the Participation Agreement and an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice therefor then being settled for which, under the terms of Paragraph 4.3(b) of the CSA, is payable in

installments; provided that the conditions specified in Paragraphs 7 and 8 of the Participation Agreement have been satisfied and there shall have been delivered to the Assignee on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Messrs. Cravath, Swaine & Moore, special counsel to the Assignee, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder to the Assignee transferring to the Assignee the security interest of the Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the CSA, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Paragraph 3.4 of the CSA and § 2.1 of the Lease;

(c) an invoice of the Builder for the units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder, dated as of the Closing Date, addressed to the Assignee, the Vendee and the Lessee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Assignee all right, title and security interest of the Builder in the units of the Equipment, and such Equipment at the time of delivery thereof was free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under the Builder; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the Assignee of the amount required to be paid by it pursuant to Paragraph 4.3(a) of the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the CSA is, insofar as the Builder is concerned, a legal, valid and binding agreement, enforceable against the Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns,

make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Agreement shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

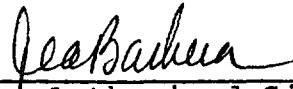
IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective

corporate seals to be hereunto affixed and duly attested,
all as of the date first above written.


[Corporate Seal]

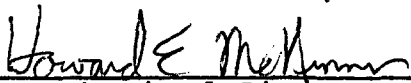
WHITTAKER CORPORATION, BERWICK
FORGE AND FABRICATING DIVISION,

by



Authorized Signatory

Attest:



Authorized Signatory

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY,

by

Assistant Vice President

[Seal]

Attest:

Corporate Trust Officer

make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Agreement shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

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IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective

corporate seals to be hereunto affixed and duly attested,
all as of the date first above written.

WHITTAKER CORPORATION, BERWICK
FORGE AND FABRICATING DIVISION,

by

[Corporate Seal]

Authorized Signatory

Attest:

Authorized Signatory

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY,

by

[Seal]

A. J. S. M.
~~Assistant~~ Vice President

Attest:

F. H. Gilman
Corporate Trust Officer

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF COLUMBIA,)

On this *7th* day of *May* 1981, before me personally appeared *Joseph La Barbera*, to me personally known, who being by me duly sworn, says that he is an Authorized Signatory of WHITTAKER CORPORATION, BERWICK FORGE AND FABRICATING DIVISION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Evelyn A. Schmidt

Notary Public
EVELYN A. SCHMIDT, NOTARY-PUBLIC
BERWICK BORO, COLUMBIA COUNTY
MY COMMISSION EXPIRES DEC. 10, 1984
Member, Pennsylvania Association of Notaries

[Notarial Seal]

My Commission expires *Dec 10, 1984*

STATE OF MARYLAND,)
) ss.:
CITY OF BALTIMORE,)

On this day of 1981, before me personally appeared , to me personally known, who being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

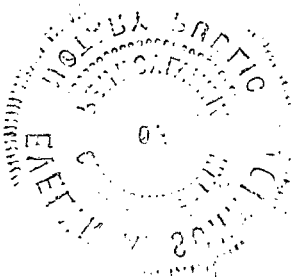
ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of April 1, 1981.

MELLON INTERNATIONAL LEASING
COMPANY, as Vendee,

by

Vice President



COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF COLUMBIA,)

On this day of 1981, before me
personally appeared , to me per-
sonally known, who being by me duly sworn, says that he
is an Authorized Signatory of WHITTAKER CORPORATION, BERWICK
FORGE AND FABRICATING DIVISION, that one of the seals affixed
to the foregoing instrument is the corporate seal of said
Corporation, that said instrument was signed and sealed on
behalf of said Corporation by authority of its Board of
Directors, and he acknowledged that the execution of the
foregoing instrument was the free act and deed of said
Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND,)
) ss.:
CITY OF BALTIMORE,)

On this *7th* day of *May* 1981, before me
personally appeared *A. F. SAFFRAN*, to me per-
sonally known, who being by me duly sworn, says that he is
a Vice President of MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, that one of the seals affixed to the foregoing
instrument is the seal of said Corporation, that said
instrument was signed and sealed on behalf of said Corpo-
ration by authority of its Board of Directors, and he
acknowledged that the execution of the foregoing instrument
was the free act and deed of said Corporation.

Patricia A. Shilow
Notary Public

[Notarial Seal]

My Commission expires *7-1-82*

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

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MELLON INTERNATIONAL LEASING
COMPANY, as Vendee,

by

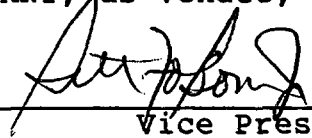
Vice President

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

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MELLON INTERNATIONAL LEASING
COMPANY, as Vendee,

by



Vice President

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF COLUMBIA,)

On this day of 1981, before me
personally appeared , to me per-
sonally known, who being by me duly sworn, says that he
is an Authorized Signatory of WHITTAKER CORPORATION, BERWICK
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to the foregoing instrument is the corporate seal of said
Corporation, that said instrument was signed and sealed on
behalf of said Corporation by authority of its Board of
Directors, and he acknowledged that the execution of the
foregoing instrument was the free act and deed of said
Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND,)
) ss.:
CITY OF BALTIMORE,)

On this day of 1981, before me
personally appeared , to me per-
sonally known, who being by me duly sworn, says that he is
an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, that one of the seals affixed to the foregoing
instrument is the seal of said Corporation, that said
instrument was signed and sealed on behalf of said Corpo-
ration by authority of its Board of Directors, and he
acknowledged that the execution of the foregoing instrument
was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires